**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 23305 of 2007**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE DN PATEL**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**AHMEDABAD EDUCATION SOCIETY & 1 - Petitioners**
**Versus**
**THE UNION OF INDIA & 3 - Respondents**

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**Appearance :**
MR DV PARIKH for the Petitioners.
RULE SERVED for Respondent No.1.
MR NV ANJARIA for Respondent Nos.2 & 3
RULE UNSERVED for Respondent No.4.

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**CORAM : HONOURABLE MR.JUSTICE DN PATEL**

**Date : 28/11/2007**

**ORAL JUDGMENT**

This writ petition has been preferred against the order dated 6th July,2007 passed by State Chief Information Commissioner in Complaint No.1429 of 2006-07, whereby the petitioners who were not parties before the said authority, are directed to refund the fees under the Right to Information Act,2005 (hereinafter referred to as "the Act,2005"). Against this order, third party has preferred the present petition on the ground that the petitioners were not joined as parties in the proceedings before State Chief Information Commissioner and no opportunity of being heard was given and the direction has been given to the petitioners to refund fees to the original applicant i.e. to the present respondent No.4, is dehors the provisions of the Act,2005.

2. Learned counsel for the petitioners submitted that State Chief Information Commissioner has not properly appreciated the provisions of the Act,2005 especially Section 11 read with Section 7(7) of the Act nor the authorities below have properly appreciated the judgement delivered by this Court in the case of **Reliance Industries Limited V/s. Gujarat State Information Commission & Others now, reported in AIR 2007 Gujarat 203** as well as against the decision rendered by this Court in the case of **Gokalbhai Nanbhai Patel V/s. Chief Information Commissioner & Others now, reported in**

**2007(3) G.L.H. 352**. It is also submitted by learned counsel for the petitioners that there is no power, jurisdiction and authority with the State Chief Information Commissioner to pass an order of refund of fees especially when an application is preferred under Section 18 of the Act,2005. He has also narrated the scope of power, jurisdiction and authority under Section 18 and 19 of the Act,2005. At length, reliance has been placed upon the decisions rendered by this Court as stated hereinabove and pointed out that without giving an opportunity of being heard to the petitioners, State Chief Information Commissioner has passed an order in respect of third party i.e. present petitioners, which is totally in defiance of the provisions of the Act,2005, and, hence, the order passed by State Chief Information Commissioner deserves to be quashed and set aside. The question about refund is a civil dispute and, therefore, this right can be settled under Section 9 of Code of Civil Procedure,1907 by competent Civil Court and not under the Right to Information Act,2005. This aspect of the matter has not been appreciated by the State Chief Information Commissioner.

3. Learned counsel for respondent Nos.2 and 3 submitted that it is a fact that the present petitioners are not heard. Nonetheless, looking to the resolution passed by Gujarat University dated 20th May,2006, the fees

was ordered to be refunded as the per the impugned order and the petitioners are running the college and are bound by the resolution passed by Gujarat University.

4. Respondent No.4 has refused to accept the notice.

5. Having heard the learned counsel for both the sides and looking to the facts and circumstances of the case, the order dated 6th July,2007 passed by State Chief Information Commissioner in Complaint No.1429/2006-07 (Annexure “G” to the memo of the petition) deserves to be quashed and set aside, for the following facts and reasons:

(i) It appears from the facts of the case that the present respondent No.4 has preferred a Complaint under Section 18 of the Right to Information Act,2005. As per Section 18, the complaint can be preferred before the State Information Commission and Chief Information Commissioner can initiate an inquiry and can impose penalty as per Section 20 of the Act,2005. While holding inquiry, as per Section 18(3) of the Act,2005, State Chief Information Commissioner has been clothed with powers of the Civil Court under the Code of Civil Procedure,1908, in respect of summoning and enforcing the attendance of persons and compel them to give oral and

written evidence on oath; requiring the discovery and inspection of documents; receiving evidence on affidavit; requisitioning any public record or copies thereof from any court or office. But so far as refund of fees is concerned, it is a matter to be decided by the Civil Court of competent jurisdiction under Code of Civil Procedure,1907. State Chief Information Commissioner has no power, jurisdiction and authority under the Act,2005 to pass an order of refund of the fees and, therefore, the impugned order deserves to be quashed and set aside.

(ii) Looking to the impugned order passed by State Chief Information Commissioner, it appears that though the order has been passed against the petitioners, they have not been joined as parties in the proceedings. No notice or summons were issued to the present petitioners. Thus, without giving an opportunity of being heard to the petitioners, the impugned order has been passed and, hence, the order deserves to be quashed and set aside.

(iii) It ought to be kept in mind by State Chief Information Commissioner that whenever any order has been passed against any person or institution, the same ought to be heard. This is a bare minimum requirement. In the facts of the present case, this bare minimum requirement of hearing, has not been complied with and a civil dispute has been decided by the State Chief Information

Commissioner, as decided by this Court in the case of **Gokalbhai Nanbhai Patel V/s. Chief Information Commissioner & Others now, reported in 2007(3) G.L.H. 352**, especially in para 9(iv) and (v) as under:

> *"**(IV)** Whenever any applicant is applying for getting any information about third party, such information shall be given by Public Information Officer under Section 7 of the Act,2005, only after following procedure prescribed under Section 11(1) of the Act,2005 and also keeping in mind Section 7(7) of the Act,2005. Here no such opportunity of hearing was given to the petitioner by Chief Information Commissioner.*
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> ***(V)** The concerned authorities have not properly appreciated that the present petitioner was never a party in the First Appeal as well as in the Second Appeal and the order has been passed against the petitioner. No notice was ever issued to the present petitioner and, therefore also, the impugned order deserves to be quashed and set aside. Chief Information Commissioner appears to be ignorant about aforesaid simple judicial process. Bare minimum requirement is, to follow principles of natural justice."*

Similarly, it is held by this Court in the case of **Reliance Industries Limited V/s. Gujarat State Information Commission & Others now, reported in AIR 2007 Gujarat 203**, especially in para-12 thereof to the effect that whenever the State Information Commissioner is exercising power under Section 18 of the Act,2005, he has no authority and jurisdiction to pass an order for grant

of information. In the facts of the present case, the petitioners are third party against whom the relief was sought for. No order has been passed by Public Information Officer nor by First Appellate Authority nor by Second Appellate Authority. Straightway an application has been preferred under Section 18 before the State Chief Information Commissioner. Looking to the provisions of Section 18 of the Act,2005, State Chief Information Commissioner can hold an inquiry and can impose penalty upon erring officer. No order can be passed against the third party otherwise right of first appeal as well as second appeal of third party will be taken away. Looking to the facts of the present case, it is clear that the State Chief Information Commissioner has exceeded his jurisdiction under the Act,2005.

(iv) Order passed without giving an opportunity of being heard, lead to arbitrariness. Arbitrariness and equality are sworn enemies of each other. Where arbitrariness is present, equality is always, absent and where equality is present, arbitrariness is absent. In the facts of this case, there is gross violation of principles of natural justice. Hence, the order is arbitrary and ,therefore, is violative of Article 14 of the Constitution of India.

6. In view of the aforesaid facts, reasons and

judicial pronouncements, the impugned order dated 6th July,2007 passed by State Chief Information Commissioner in Complaint No.1429 of 2006-07 is hereby quashed and set aside. Rule made absolute with no order as to costs.

**(D.N.PATEL,J)**

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